

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

DENNY CLEMENS,

Defendant.

CASE NO. 8:09CR232

TENTATIVE FINDINGS

The Court has received the Revised Presentence Investigation Report (“PSR”) in this case. The Defendant objected to the PSR informally to the Probation officer, as reflected in the Addendum to the PSR. Objections were not filed with the Court, and the Defendant has recently had a change in counsel. See Order on Sentencing Schedule, ¶ 6. The government adopted the PSR. (Filing No. 70.) The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The plea agreement recommends that the Defendant be held responsible for at least 5 but less than 15 kilograms methamphetamine and, therefore, that his base offense level be calculated as level 36. The PSR places him at base offense level 38. The Court's tentative findings are that, absent unusual circumstances, the plea agreement should be upheld and the base offense level should be calculated as level 36.

In light of the recent change in defense counsel, any objections to these Tentative Findings may be filed before sentencing or raised orally at the sentencing hearing.

IT IS ORDERED:

1. The Court's tentative findings are that the Defendant's objections (Addemdum) to the PSR are granted;

2. The parties are notified that my tentative findings are that otherwise the PSR is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 26th day of April, 2010.

BY THE COURT:

S/ Laurie Smith Camp
United States District Judge